

1 Adam Paul Laxalt
2 Nevada Attorney General
3 Lawrence VanDyke (NSB 13643C)
4 Solicitor General
5 C. Wayne Howle (NSB 3443)
6 Chief Deputy Attorney General
7 OFFICE OF THE ATTORNEY GENERAL
8 100 North Carson Street
9 Carson City, Nevada 89701
10 (775) 684-1100/1108 (Tel./Fax)
11 LVanDyke@ag.nv.gov
12 WHowle@ag.nv.gov
13 *Attorneys for State of Nevada*

9 Christopher Hicks, Esq. (NSB 7747)
District Attorney
10 Michael W. Large, Esq. (NSB 10119)
Deputy District Attorney
11 WASHOE COUNTY DISTRICT ATTORNEYS'
12 OFFICE
13 1 South Sierra Street, South Tower, 4th Floor
14 Reno, Nevada 89501
15 775-328-3200 (Telephone)
16 *Attorneys for Washoe County, Nevada*

15 Laura K. Granier, Esq. (NSB 7357)
16 laura.granier@dgsllaw.com
17 DAVIS GRAHAM & STUBBS LLP
18 50 W. Liberty Street, Suite 950
19 Reno, Nevada 89501
20 (775) 229-4219/ (775) 403-2187 (Tel./Fax)
21 *Attorneys for Counties and Private Plaintiffs*

22 UNITED STATES DISTRICT COURT
23 DISTRICT OF NEVADA

24 WESTERN EXPLORATION LLC, et al.,

25 Plaintiffs,

26 v.

27 U.S. DEPARTMENT OF THE INTERIOR,
et al.,

✓

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
JUL 12 2016	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

Case No. 3:15-cv-00491-MMD-VPC

STIPULATED PROTECTIVE ORDER

Defendants.

This Stipulated Protective Order has been agreed to by the Plaintiffs and Defendants in the above-captioned action. The Intervenor Defendants have advised that they do not need to see the information that has been identified as confidential, agree they will not be provided the confidential information, will not be subject to this Stipulated Protected Order, and do not object to the filing of this Stipulated Protective Order without their signatures. This Stipulated Protective Order is agreed to by and among Plaintiff Western Exploration, LLC, and Defendants U.S. Department of the Interior *et al.* ("Party" and/or collectively, the "Parties") in the case captioned *Western Exploration, LLC vs. U.S. Department of the Interior, et al.*, pending as Docket No. 3:15-cv-00491-MMD-VPC in the United States District Court for the District of Nevada (the "Litigation"), and their respective counsel. Each of these Parties to the Litigation and their respective counsel hereby agree to be bound by the terms of this Stipulated Protective Order.

1. Plaintiff Western Exploration, LLC ("WEX") filed a Motion to File Exhibit to Plaintiffs' Reply in Support of Motion for Summary Judgment Under Seal on June 13, 2016 (ECF 81) which seeks an order allowing WEX to file an unredacted copy of the Declaration of Marceau Schlumberger ("Declaration") under seal, and to publicly file a redacted copy of the Declaration, because the declaration contains confidential business information of WEX that if disclosed would cause competitive harm to WEX, and confidential business information of third parties. Defendants are required to protect this confidential information in accordance with

1
2 applicable laws and regulations, including Exemption 4 of the Freedom of Information Act, 5
3 U.S.C. §552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. Nothing in this Protective
4 Order shall be construed to limit the authority of the United States to undertake any action
5 pursuant to applicable law or regulation.
6

7 2. This Protective Order is intended to cover said sensitive information which is
8 contained in the Declaration (hereinafter, the "Confidential Information").

9 3. The Parties and their respective counsel shall hold in trust and confidence, and not
10 disclose to others, any Confidential Information which has been or is disclosed by WEX.
11 Confidential Information shall not be used by counsel or any other person for any purpose other
12 than the defense of this action. This paragraph shall survive and continue after any expiration or
13 termination of this Protective Order and shall bind the Parties.
14

15 A. The undertakings and obligations of the Parties under this Protective Order shall
16 not apply to any information which is produced that is available to the public, or
17 is otherwise in the public domain through no action or fault of the Parties.

18 B. The Parties agree to store the Confidential Information securely and to ensure
19 appropriate measures are taken to protect against the unauthorized or unintended
20 access, use or disclosure of the Confidential Information.

21 C. The Parties agree that, except as provided in this Protective Order, they will not
22 copy or reproduce the Confidential Information mechanically, digitally or
23 otherwise, or disseminate the Confidential Information to any third party other
24 than their respective counsel unless required to do so in connection with a
25 submission to the Court in camera.
26

1
2 D. In the event the Parties are required to disclose the Confidential Information to
3 experts they may hire or agency personnel, the Parties may disclose the
4 Confidential Information to their experts or agency personnel only after such
5 experts agree in writing to be bound by this Protective Order, pursuant to the form
6 attached hereto as Exhibit A, affirming that the recipient: (i) has read this Order
7 and understands all of its terms; (ii) agrees to abide by and to be bound by the
8 terms of this Order; (iii) agrees to submit to the Court's jurisdiction, for purposes
9 of enforcement of this Order by proceedings for contempt and/or proceedings for
10 legal and/or equitable relief, including damages, for a breach thereof. Counsel
11 shall retain such Confidentiality Agreement until such time as the litigation,
12 including all appeals, is concluded and counsel has retrieved all Confidential
13 Information from the recipient pursuant to this Order. Counsel are responsible for
14 ensuring that their legal, paralegal, clerical staff, and their experts or consultants
15 and any agency personnel comply with this Order.
16

17
18 E. The Parties hereto further agree to the following terms and conditions:

- 19 i. Any breach by the Parties (or their counsel or their experts) of any
20 obligations under this Protective Order may result in irreparable injury to
21 WEX for which damages and other legal remedies could be inadequate. In
22 seeking enforcement of any of these obligations, WEX may seek (in
23 addition to other remedies) to preliminary and permanent injunctive and
24 other equitable relief to prevent, discontinue and/or restrain the breach of
25 this Protective Order.
26

1
2 ii. Subject to the procedures set forth herein, no documents containing, or
3 otherwise disclosing Confidential Information shall be publicly filed with
4 the Court. Confidential Information shall be submitted to the Court under
5 seal as follows: (a) the original signed copy of any pleadings containing,
6 referring to, or otherwise disclosing Confidential Information shall be
7 electronically filed with the Clerk of the Court in the normal manner under
8 the Local Rules of this Court, but the Confidential Information contained,
9 referred to, or otherwise disclosed therein shall be redacted (and bear the
10 stamp "redacted") so that it does not appear in the publicly filed copy of
11 the pleading or filing; and (ii) unless otherwise permitted by statute, rule
12 or prior court order, the party shall electronically file the unredacted
13 document under seal, along with a contemporaneous motion for leave to
14 file those documents under seal, consistent with and following the court's
15 electronic filing and service procedures in Local Rule IA 10-5.
16 Notwithstanding any agreement among the parties, the party seeking to
17 file a paper under seal bears the burden of overcoming the presumption in
18 favor of public access to papers filed in court. *Kamakana v. City and*
19 *County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006); *Pintos v. Pac.*
20 *Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2010). After filing the
21 document under seal, the filing party shall file a Notice of Filing Under
22 Seal.
23
24
25
26
27
28

- 1
- 2 iii. This Protective Order in no way affects or relieves any party of its
- 3 responsibility to comply with any federal, state or local law or regulation.
- 4 Nothing in this Protective Order alters the rights and/or liabilities of the
- 5 parties with respect to the litigation.
- 6
- 7 iv. This Protective Order shall govern all proceedings in this action and
- 8 survive the termination of the case and is binding on all parties until
- 9 further notice of the Court.
- 10 v. Within ninety (90) days of the closing or dismissal of the Litigation, the
- 11 Defendants and Intervenors and any of the Defendants' and Intervenors'
- 12 experts who have executed Exhibit A to the Protective Order shall return
- 13 to WEX, through WEX's undersigned counsel, all hard copies of the
- 14 Confidential Information and shall certify in writing to WEX that they
- 15 have made their best efforts to permanently delete or otherwise destroy all
- 16 electronic copies in the possession or control of that party to the Protective
- 17 Order. All counsel of record who received Confidential Information shall
- 18 make certification of compliance herewith and shall deliver the same to
- 19 the producing party not more than 90 days after final termination of this
- 20 litigation, including all appeals. Counsel, including any person who
- 21 obtained access to the Confidential Information pursuant to this Order,
- 22 shall be barred from disclosing such information thereafter.
- 23
- 24
- 25
- 26
- 27
- 28

vi. The Court may sanction counsel, their staff, or any person who obtained access to the Confidential Information pursuant to this Order, as appropriate for violation of this Order.

vii. Subject to the Federal Rules of Evidence, Confidential Information may be offered at any court hearing, provided that the proponent of the evidence gives reasonable notice to all counsel and to the Court. Any party may move the Court for an order that the evidence be received in camera or under other conditions to prevent unauthorized disclosure.

IN WITNESS WHEREOF, the parties have executed this Protective Order as of the date first above written.

Respectfully submitted this 22nd day of June, 2016.

DATED: June 22, 2016

DATED: June 22, 2016

Davis Graham & Stubbs LLP

By: /s/ Laura K. Granier
Laura K. Granier, Esq. (SBN 7357)
50 W. Liberty Street, Suite 950
Reno, NV 89501
(Tel) 775-229-4219
(Fax) 775-403-2187

Attorneys for Counties and Private Plaintiffs

By: /s/ Lawrence VanDyke
Adam Paul Laxalt, Esq. (SBN 12426)
Attorney General
Lawrence VanDyke (NSB 13643C)
Solicitor General
C. Wayne Howle (NSB 3443)
Chief Deputy Attorney General
100 North Carson Street
Carson City, NV 89701
(Tel/Fax) 775-684-1100/684-1108

Attorneys for Plaintiff State of Nevada

DATED: June 22, 2016

DATED: June 22, 2016

By: /s/ Michael W. Large
Christopher Hicks, Esq. (NSB 7747)
District Attorney
Michael W. Large, Esq. (NSB 10119)
Deputy District Attorney
1 South Sierra Street, South Tower, 4th Floor
Reno, Nevada 89501
775-328-3200 (Telephone)

JOHN C. CRUDEN
Assistant Attorney General

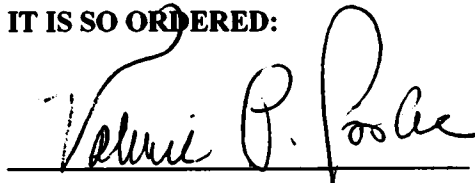
By: /s/ Luther L. Hajek
LUTHER L. HAJEK, Trial Attorney
BARCLAY SAMFORD, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
Tel: 303-844-1376 / 303-844-1475
Fax: 303-844-1350
E-mail: Luke.Hajek@usdoj.gov
Clay.Samford@usdoj.gov

Attorneys for Plaintiff Washoe County, Nevada

TANYA NESBITT, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
601 D Street, NW
Washington, DC 20004
Tel: 202-305-0457/Fax: 202-305-0274
E-mail: Tanya.Nesbitt@usdoj.gov

Attorneys for Defendants

IT IS SO ORDERED:



United States Magistrate Judge

Dated: July 12, 2016

EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, _____ hereby acknowledge, agree and certify under penalty of perjury that:

1. I have read the Stipulated Protective Order entered in the *Western Exploration, LLC vs. U.S. Department of the Interior, et al.*, pending as Docket No. 3:15-cv-00491-MMD-VPC in the United States District Court for the District of Nevada (the "Litigation") (the "Order").

2. I understand the terms of the Order.

3. I hereby agree to be bound by the terms of the Order and understand that a violation thereof may subject me to contempt proceedings and to legal and equitable remedies, including damages.

4. I understand and agree that money damages would not be a sufficient remedy for breach of this Order and that a party that asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. I agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Order but shall be in addition to all remedies available at law or equity.

5. I hereby irrevocably submit to the jurisdiction of the United States District Court for the District of Nevada, or any other court of competent jurisdiction, for purposes of ensuring compliance with the terms and conditions of the Order and for civil remedies in the form of legal and equitable relief, including damages, for any breach thereof.

Date: _____

Printed Name: _____

Signature: _____

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on the 22nd day of June, 2016, a true and correct copy of the foregoing document was transmitted electronically to the following via the Court's e-filing electronic notice system:

Holly Vance, Esq. Assistant United States Attorney 100 West Liberty Street, Suite 600 Reno, NV 89501	Holly.A.Vance@usdoj.gov
Luther L. Hajek, Esq. Barclay T. Samford, Esq. Trial Attorney, Natural Resources Section United States Department of Justice Environment and Natural Resources Division 999 18th St., South Terrace, Suite 370 Denver, CO 80202	Luke.Hajek@usdoj.gov Clay.Samford@usdoj.gov
Tanya Nesbitt, Esq. Trial Attorney U.S. Department of Justice Environment and Natural Resources Division Natural Resources Section P.O. Box 7611 Washington, D.C. 20044	Tanya.Nesbitt2@usdoj.gov
Julie Cavanaugh-Bill Cavanaugh-Bill Law Offices, LLC 401 Railroad St., Ste. 307 Elko, Nevada 89801	julie@cblawoffices.org
Roger Flynn, Esq. Western Mining Action Project 440 Main St., #2 P.O. Box 349 Lyons, CO 80540	wmap@igc.org

Matt Kenna, Esq. Public Interest Environmental Law 1045 E. 5 th Ave., Suite 11B Durango, CO 81301	matt@kenna.net
Adam Paul Laxalt <i>Nevada Attorney General</i> Lawrence VanDyke <i>Solicitor General</i> C. Wayne Howle <i>Chief Deputy Attorney General</i> OFFICE OF THE ATTORNEY GENERAL 100 North Carson Street Carson City, Nevada 89701	LVanDyke@ag.nv.gov WHowle@ag.nv.gov
Christopher Hicks, Esq. District Attorney Michael W. Large, Esq. Deputy District Attorney Washoe County District Attorneys' Office 1 South Sierra Street, South Tower, 4th Floor Reno, Nevada 89501	MLarge@da.washoecounty.us

/s/ Jeanette Sparks
Jeanette Sparks